

CONFIDENTIAL  
John Van Merkensteijn – April 19, 2021

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE: )  
5 )  
6 CUSTOMS AND TAX ADMINISTRATION OF )  
7 THE KINGDOM OF DENMARK )  
8 (SKATTEFORVALTNINGEN) TAX REFUND )  
9 SCHEME LITIGATION )  
This document relates to case nos. )  
19-cv-01783; 19-cv-01788; 19-cv-01794; )  
19-cv-01798; 19-cv-01918 )

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11  
12 C O N F I D E N T I A L

13  
14  
15 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL  
16 EXAMINATION OF  
17 JOHN VAN MERKENSTEIJN  
18 DATE: April 19, 2021

19  
20  
21  
22  
23  
24  
25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 JOHN VAN MERKENSTEIJN,  
2 called as a witness, having been first  
3 duly sworn according to law, testifies as follows:  
4  
5

6 EXAMINATION BY MR. WEINSTEIN:

7 Q Okay. Sir, my name the Marc  
8 Weinstein. I'm with the firm of Hughes,  
9 Hubbard & Reed, LLP. We represent the  
10 plaintiff SKAT in this deposition. I will be  
11 asking you the questions throughout the day.

12 Can you start by just telling us  
13 how you pronounce your last name?

14 A Van Merkensteijn.

15 Q Okay. Well, I now have no excuses  
16 if I get it wrong.

17 A Okay.

18 Q Okay. Mr. Van Merkensteijn, during  
19 the day, as you can tell, we have a court  
20 reporter —

21 A I'm hearing a lot of echo or static  
22 or something.

23 THE VIDEOGRAPHER: Stand by. The  
24 time is 10:34 a.m. and we're going off  
25 the record.

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1 A Well, I assume so.

2 Q Yeah. 6,250,000 shares?

3 A Before I say yes, let me look.

4 (Witness reviewing.)

5 Okay. Yes.

6 Q Did you have any understanding as  
7 to how stock loan transactions were a part of  
8 the strategy?

9 A It would have been a method of  
10 borrowing money to pay for the shares.

11 Q Okay. So earlier, when you  
12 referred to borrowing money, it's through  
13 this kind of transaction?

14 A However they wanted to do it. But  
15 this is one way to borrow against the stock.

16 Q Right. And were you aware that in  
17 each case in which one of the pension plans  
18 purchased stock, it made a stock lending  
19 transaction for the same amount?

20 A I mean, more or less, yeah.

21 Q The counterparty in the trade is  
22 Aquila (Cayman)?

23 A Where -- oh, yeah. Okay.

24 I see that.

25 Q Are you familiar with an entity

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1 for got rejected because somebody else had  
2 the name. So I finally ran out of steam.

3 You know, I used to look at a map  
4 and pick counties in England for names and  
5 stuff like that.

6 Q Okay. And so that explains why you  
7 wanted the adjective.

8 Did you have an understanding as to  
9 why, when you were selecting an adjective, he  
10 suggested not to make them all financial  
11 sounding, but to make some sound like  
12 manufacturing, productions, and technology?

13 A I don't -- I didn't -- I don't  
14 remember anything specific about the  
15 relevance of that, other than it's just more  
16 adjectives.

17 Q Okay. Can you turn, please, to  
18 Exhibit 2188?

19 A Okay.

20 Q And if you turn to the last page,  
21 the first e-mail in this chain is from you to  
22 Amy Gregory.

23 A (Witness reviewing.)

24 Okay.

25 Q Who was Amy Gregory?

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1           A     She was one of the either  
2     paralegals or associates working for  
3     Kaye Scholer.

4           Q     Okay. And you write, "I think we  
5     left you with the task of coming up with 30  
6     dissimilar random names for LLC and plans."

7                     Did you have any separate  
8     conversation with her, or was that just  
9     a -- it's trailing from the last e-mail  
10    chain?

11          A     I would -- yeah, I'm sure I spoke  
12    to her and tasked Kaye Scholer with the job  
13    of coming up with names. Because I was out  
14    of steam on coming up with names.

15          Q     Okay. In the next e-mail, on the  
16    prior page, from Mr. Wells, he says to you,  
17    "As discussed, here is our stab at 30 names  
18    for the LLCs."

19          A     Right.

20          Q     There's a list of 30.

21                     Prior to that, Mr. Wells sending  
22    these names, did you and anyone at  
23    Kaye Scholer have any discussions about what  
24    each of the LLCs businesses would be?

25          A     No. Not that I can recall.

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1 Q All right. As far as you know, did  
2 Kaye Scholer know what those businesses were  
3 going to be used for?

4 A No. We were going to form the LLCs  
5 and figure it out later.

6 Q Okay. What was known was that each  
7 LLC would then open up a pension plan in  
8 order to participate in the dividend  
9 arbitrage trading?

10 A Yes.

11 Q All right. At this point in time,  
12 as far as you know, did Mr. Wells know on  
13 whose behalf each of these entities was being  
14 named?

15 A At some point, we -- either he or  
16 we assigned names to particular individuals.

17 Q Okay. All right.

18 So if you go backwards two pages,  
19 there's an e-mail from Mr. Wells on June 18th  
20 at 4:36 p.m.

21 Do you see that one?

22 A No. I'm sorry.

23 On which page?

24 Q It's at the bottom. The Bates  
25 stamp is 7267.

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10  
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12 C O N F I D E N T I A L  
13 SUBJECT TO THE PROTECTIVE ORDER  
14

15 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER  
16 ORAL EXAMINATION OF  
17 JOHN VAN MERKENSTEIJN  
18 VOLUME II  
19 DATE: April 20, 2021  
20  
21  
22  
23  
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1       J O H N V A N M E R K E N S T E I J N,  
2               called as a witness, having been first  
3       duly sworn according to law, testifies as follows:  
4

5               MS. MCCARTHY: Marc, before we  
6       start, can I just add something to the  
7       record. I failed yesterday to designate  
8       the transcript from yesterday as  
9       Confidential pursuant to the protective  
10      order, and ask that it be so designated  
11      now.

12              MR. WEINSTEIN: Okay.

13              MS. MCCARTHY: Thank you.  
14

15      CONTINUED EXAMINATION BY MR. WEINSTEIN:

16              Q     Good morning, Mr. Van Merkensteijn?

17              A     Good morning.

18              Q     Can we start by having you look at  
19      Exhibit 2307?

20              MR. WEINSTEIN: Mark this as 2307.

21              (Whereupon the above mentioned was  
22      marked for Identification.)

23              A     Okay.

24              Q     Exhibit 2307 is an invoice from  
25      Ganymede Cayman, Limited to you and it names



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1 A I'm the sole beneficiary, yes.

2 Q Was that plan involved in the  
3 dividend arbitrage strategy in Denmark?

4 A No, it was not.

5 Q For what purpose did you transfer  
6 money from the Omineca plan's account to the  
7 Rossi plan's account?

8 A I was trying to aggregate as much  
9 cash as I could. Because in that entity, I  
10 was seeking to do an acquisition.

11 Q In the Rossi entity?

12 A In the Rossi entity.

13 Q Okay. To the extent there are  
14 additional payments from the Omineca plan  
15 account to the Rossi plan account in  
16 subsequent periods, would it be for the same  
17 purpose?

18 A Generally, yes. I was trying to  
19 consolidate as much as I could because I  
20 needed to have a significant equity to be  
21 able to do this transaction.

22 Q If you turn to Exhibit 2311?

23 MR. WEINSTEIN: Mark this as 2311.

24 (Whereupon the above mentioned was  
25 marked for Identification.)

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1 A Okay.

2 Q And this is an e-mail from  
3 Stephanie Furr to you on September 22, 2015?

4 A Right.

5 Q Was Ms. Furr your assistant?

6 A She was my assistant, right.

7 Q She attaches some handwritten  
8 notes.

9 Do you see that?

10 A I see that.

11 Q Are -- is that your handwriting?

12 A The dark part is my handwriting,  
13 yes.

14 Q All right. Do you know who the  
15 light part is?

16 A I think that's her note taking.

17 Q Okay. So on the top portion of the  
18 note, it says, "Client," and lists some LLCs,  
19 and then "Bill To," and it lists some other  
20 entities.

21 A Right.

22 Q For example, the first row, it  
23 says, "Client, Omineca LLC. Bill to  
24 RJM Capital LLC, \$25,000. "

25 A Yes.

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1 Q And what is that referring to?

2 A Telling her to prepare the invoice  
3 from Omineca to RJM.

4 Q Omineca was your LLC?

5 A Omineca was one of my LLCs, right.

6 Q Was RJM Capital an LLC of Richard  
7 Markowitz?

8 A I believe so, yes.

9 Q What services did Omineca LLC  
10 render for Mr. Markowitz's LLC?

11 A Well, as I've said, I think from  
12 time to time through -- you know, throughout  
13 the whole period, we each advised each other,  
14 helped each other look at transactions we  
15 might do, that we might be able to invest in,  
16 that we might be able to put into a pension  
17 plan.

18 And around this time, there were  
19 maybe three or four transactions where Rich  
20 was responsible for investigating it, doing  
21 due diligence, deciding whether we should  
22 invest or not. There were three or four  
23 larger ones that I took responsibility for  
24 really investigating.

25 And since we were rendering

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1 services, we agreed that we would invoice for  
2 that.

3 Q All right. And so, the next row is  
4 Basalt Ventures billing to RJM Capital for  
5 27,500.

6 Is that also one of your LLCs  
7 billing for services --

8 A Yes.

9 Q -- to Mr. Markowitz?

10 A Yes, it is.

11 Q How did you decide the different  
12 amounts for each of these services rendered?

13 A Well, I don't recall specifically.  
14 I mean, generally, they're all in the same  
15 amounts because we wanted to balance the  
16 books.

17 And like I said, you know, one of  
18 the principles that I learned early on is  
19 always keep the numbers a little bit  
20 different so you can figure out which one is  
21 which. Otherwise you end up with a bank  
22 statement with a number, you don't know what  
23 it is.

24 Q I think you are referring to your  
25 testimony from earlier that you wanted to

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1 keep the names of the LLCs different for that  
2 purpose.

3 Is that right?

4 A Yeah. But it's generally you keep  
5 things different so you can figure it out  
6 later. If you just have a bunch of payments  
7 for the same amount, then you never know  
8 which one's for what.

9 Q And so, in total, on the top here,  
10 you're billing for \$100,000 worth of services  
11 to Mr. Markowitz?

12 A Yes, I am.

13 Q Through four entities?

14 A Right.

15 Q All right. And so each one could  
16 have been split equally for \$25,000?

17 A Sure.

18 Q But you wanted to make the numbers  
19 appear dissimilar for -- so that you could  
20 figure out which payment was for what,  
21 ultimately?

22 A Exactly.

23 Q And what would be the confusion if  
24 Omineca is billing for some services and  
25 Basalt is billing for others? Why would the

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1 same amount cause confusion as to what the  
2 payments were for?

3 A I don't -- I don't know. We just  
4 decided to make them a little bit different,  
5 that's all.

6 Q So Starfish Capital, that was also  
7 your entity?

8 A Yes, it was.

9 Q Do you know whose entity  
10 Calypso LLC was?

11 A It's one of Rich's.

12 Q Are you aware that that was his  
13 wife's entity?

14 A No.

15 Q Did you know that you were  
16 providing services to Jocelyn Markowitz's  
17 entity?

18 A I don't know. You know, I don't  
19 know how we decided which entity would be the  
20 recipient of the fee, or the payor of the  
21 fee.

22 Q Sorry. And then, the last item on  
23 the top half is Voojo, which is your entity,  
24 billing Calypso for 17,500.

25 Is that right?

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1 A Correct.

2 Q All right. Then, underneath the  
3 line on the bottom half, there are bills from  
4 Bernina -- well, starting with Bernina LLC.

5 Well, withdrawn.

6 A Yes.

7 Q I'm sorry. I will withdraw that.

8 On the bottom half, the first item,  
9 it says that Bernina LLC is going to pay  
10 AvaniX Management LLC.

11 Is that right?

12 A Right.

13 Q All right. And Bernina was your  
14 entity?

15 A Bernina was mine, right.

16 Q AvaniX was Mr. Markowitz's?

17 A Yes.

18 Q And so in this -- for this, it's  
19 saying that AvaniX provided \$30,000 worth of  
20 services to Bernina?

21 A That's what we invoiced for, right.

22 Q Okay. He also invoiced Bernina  
23 from his Cavus Systems equity for 25,000?

24 A Yes.

25 Q And then, are those two other

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1 entities of Mr. Markowitz's which billed the  
2 Azalea LLC for two different amounts?

3 A Right.

4 Q The Azalea LLC, that's not yours.  
5 Is that right?

6 A That's my wife's.

7 Q What services was Mr. Markowitz  
8 providing through Hadron and Routt to your  
9 wife's LLC?

10 A Well, the same services. It's  
11 fungible. It didn't matter whether it was my  
12 wife or me, and we were looking at making  
13 these investments or not.

14 Q Why spread it out amongst different  
15 entities, including your wife's entity?

16 A I don't know. Maybe it had the  
17 cash at the moment to pay the fee.

18 I don't know.

19 Q Do you know when the services were  
20 rendered for which these amounts are  
21 pertaining to?

22 A There's no specific dates, but  
23 these are ongoing projects that, you know,  
24 came across our horizon. We had to  
25 investigate them, we had to look at them, we



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1 had to meet the people, decide whether it was  
2 worth investing in.

3 In some cases we did, in some cases  
4 I did. In some cases he did, but I didn't.

5 Q Is the effect of the transaction  
6 listed on this page that your entities were  
7 billing Mr. Markowitz and his wife's entities  
8 for \$100,000 worth of services, and  
9 Mr. Markowitz's entities were billing your  
10 entities and your wife's entities also for  
11 \$100,000?

12 A Yes.

13 Q So the two ultimately net out.  
14 Is that right?

15 A Yeah. We wanted to keep the cash  
16 flow even.

17 Q In your testimony yesterday, you  
18 mentioned that you couldn't recall for which  
19 clients your LLCs provided services.

20 Is this -- are these the clients  
21 for which your LLCs provided services?

22 A No. There were other clients that  
23 I provided services for. Nothing  
24 related -- not related to any of this.

25 Q As you sit here today, do you

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1 recall any of those clients?

2 A Sure.

3 Q Which ones did any of these  
4 entities perform services for?

5 A Well, again, there were invoices  
6 every year. I mean, apart from this, there  
7 were invoices every year to various parties.

8 One was a private equity investor  
9 for which I had introduced some significant  
10 investors, and they owed fees for that. And  
11 we invoiced from various LLCs to them every  
12 period.

13 I think it was every quarter for  
14 quite a few years.

15 Q Okay.

16 A And the other one was principally a  
17 similar kind of thing, and it was -- I had  
18 organized a financing for somebody. They  
19 owed fees to me for that.

20 I split it up among my LLCs so they  
21 would each have some income. And I think  
22 those were paid annually.

23 I would have to check.

24 Q Okay. The date of this e-mail is  
25 September 22, 2015.

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1                   Was that after Denmark announced  
2           that it was no longer going to pay reclaims?

3           A     I don't know the timing sequence.

4           Q     Is the point of this e-mail that  
5           invoices need to be issued consistent with  
6           the notes on the second page?

7           A     Yeah. You should have an invoice  
8           for every transaction that is a fee.

9                   So the communication with Stephanie  
10          is do the invoices.

11          Q     Do you know what prompted the  
12          timing of this e-mail to do the invoices at  
13          this point?

14          A     No. I don't think it had anything  
15          to do with anything.

16          Q     On the top half of the note, next  
17          to each of your LLCs, it looks like there's a  
18          handwritten date.

19                   Do you see that?

20          A     Yes.

21          Q     Do you know what the dates refer  
22          to?

23          A     No, I don't. I don't know what she  
24          was writing.

25          Q     All right. Underneath each of your